S.B.Civil Writ Petition No.2241/2007
Tej Pal
vs
Civil Judge (Jr.Div) & Ors.

Date of order : 29.10.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.Sandeep Shah, for the petitioner.
Mr.Mahesh Bora, for the respondents.

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Heard learned counsel for the parties.

The petitioner is aggrieved against the order dated 17.2.2007 by which the trial court held that the document in question produced by the plaintiff dated 30th April, 1985 requires no registration and, therefore, held it to be admissible in evidence.

It appears from the document dated 30th April, 1985 (Annex.5) that by this document it has been conveyed that the property in question was transferred to the non-petitioner for a consideration of Rs.19,000/-. The property in question is immovable property.

According to learned counsel for the petitioner the Annex.5 dated 30th April, 1985 is a complete sale and the non-petitioner-plaintiff's own case is that he became owner of the property by virtue of this

transfer and, therefore, document requires stamp duty and registration. The trial court held that in view of the provisions of Section 17(2)(xii), the document does not require any registration and, therefore held it to be admissible in evidence.

Learned counsel for the plaintiff-non-petitioner vehemently submitted that the property was transferred by the District Collector and the District Collector is the Special Officer and he in fact, issued a certificate which requires no registration. There are restriction in the deed dated 30th April, 1985 which clearly provides that in case the vendee will transfer the property in question in violation to the condition imposed by the deed dated 30th April, 1985 then the allotment will stand cancelled, therefore, in alternative it is an allotment order, but certainly it creates right of the plaintiff-non-petitioner in the immovable property.

I considered the submissions of learned counsel for the parties and perused the Annex.5 dated 30th April, 1985. Firstly, this document was executed by the President Sainik Basti Churu who happened to be District Collector, Churu. It only conveys that an

immovable property has been transferred to the petitioner for a consideration of Rs.19,800/- and there is a condition that in case, the plaintiff will violate the condition of this deed then his allotment/sale can be canceled. This deed also gives full power to the non-petitioner-plaintiff to transfer the property but only in consonance with the condition imposed by Annex.5. The deed clearly conveys title and, therefore, it cannot be said to be a certificate of sale. The certificate of sale is different than the sale deed. It appears from the deed that the immovable property was transferred by the deed in question by the President, Sainik Basti Churu, who happened to be the District Collector, Churu and it nowhere says that it has been only a certificate of sale conducted in pursuance of any public auction under any provisions of law and under that law a certificate of sale is issued by the officer.

In view of the above reasons, the court below misconstrued the document Annex.5 and wrongly held that it is a certificate of sale and not the sale deed. The writ petition of the petitioner is therefore, allowed. The impugned order dated 17.2.2007 is set aside and it is held that the document Annex.5 dated 30th April, 1985 is

inadmissible in evidence for main purpose. So far as admitting the document in collateral purposes, the court may admit it but only for collateral purpose. The question whether the document requires any stamp duty and what stamp duty and how it can be levied can be decided by the trial court after hearing both the parties.

(PRAKASH TATIA), J.

c.p.goyal/-